

JOHN CONYERS, JR., Michigan  
CHAIRMAN

HOWARD L. BERMAN, California  
RICK BOUCHER, Virginia  
JERROLD NADLER, New York  
ROBERT C. "BOBBY" SCOTT, Virginia  
MELVIN L. WATT, North Carolina  
ZOE LOFGREN, California  
SHEILA JACKSON LEE, Texas  
MAXINE WATERS, California  
WILLIAM D. DELAHUNT, Massachusetts  
STEVE COHEN, Tennessee  
HENRY C. "HANK" JOHNSON, JR., Georgia  
PEDRO R. PIERLUISI, Puerto Rico  
MIKE QUIGLEY, Illinois  
JUDY CHU, California  
TED DEUTCH, Florida  
LUIS V. GUTIERREZ, Illinois  
TAMMY BALDWIN, Wisconsin  
CHARLES A. GONZALEZ, Texas  
ANTHONY D. WEINER, New York  
ADAM B. SCHIFF, California  
LINDA T. SANCHEZ, California  
DANIEL B. MAFFEI, New York  
JARED POLIS, Colorado

LAMAR S. SMITH, Texas  
RANKING MINORITY MEMBER

F. JAMES SENSENBRENNER, JR., Wisconsin  
HOWARD COBLE, North Carolina  
ELTON GALLEGLY, California  
BOB GOODLATTE, Virginia  
DANIEL E. LUNGREN, California  
DARRELL E. ISSA, California  
J. RANDY FORBES, Virginia  
STEVE KING, Iowa  
TRENT FRANKS, Arizona  
LOUIE GOHMERT, Texas  
JIM JORDAN, Ohio  
TED POE, Texas  
JASON CHAFFETZ, Utah  
THOMAS ROONEY, Florida  
GREGG HARPER, Mississippi

ONE HUNDRED ELEVENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

July 22, 2010

The Honorable Barack Obama  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

Dear Mr. President,

I write to request that you direct the Attorney General to appoint a special counsel to investigate the Department of Justice's dismissal of voter intimidation charges against the New Black Panther Party for Self Defense and some of its members. I also ask that such a review include whether the Department has adopted a policy of enforcing voting rights laws in a racially discriminatory manner.

The Department's initial decision to drop the case created significant controversy, since the Justice Department had effectively won an injunction against all of the defendants. Its continued refusal to give any legitimate reason for the dismissal has only increased suspicions that race and politics played a role in the decision. Recent allegations from a former Civil Rights Division attorney confirm our concerns that the Justice Department has adopted a policy of race-based non-enforcement of federal voting rights laws. If these allegations are true, it means that the Justice Department has become politicized and only an independent entity can effectively investigate this matter.

For over a year, I have sought answers from the Department about its abrupt and unexplained dismissal of its lawsuit against the New Black Panther Party and three of its members. On Election Day 2008, two members of the New Black Panther Party stood outside a polling place in Philadelphia. They were dressed in uniform and stood partially blocking the entrance to the building. One of the individuals was holding a baton. As individuals tried to enter the polling location, threatening statements and racial epithets were yelled and threats were hurled at poll watchers like, "now you will know what it means to be ruled by the black man, cracker."<sup>1</sup> Poll watchers have testified to observing voters stop, turn around, and walk away from the polling location after encountering the individuals.<sup>2</sup>

<sup>1</sup> Declaration of Bartle Bull, *U.S. v. New Black Panther Party for Self-Defense* (April 7, 2009).

<sup>2</sup> U.S. Commission on Civil Rights, "Hearing on the Department of Justice's Actions Related to the New Black Panther Party Litigation and its Enforcement of Section 11(b) of the Voting Rights Act," 57, 97-99 (April 23, 2010).

The Hon. Barack Obama  
July 22, 2010  
Page Two

The Justice Department, under the Bush Administration, charged three members of the New Black Panther Party and the organization itself with violating the Voting Rights Act. The Department effectively won the case by default after the defendants did not appear in court. But rather than completing the case and preventing the New Black Panther Party and its members from intimidating voters in future elections, the Justice Department – four months into your presidency – dropped the lawsuit against all but one of the defendants and sought weak, temporary prohibitions against future acts of intimidation. No facts had changed. No new evidence had been found.

Had these two individuals been members of the Ku Klux Klan, I doubt the Justice Department would have dropped the charges. This appears to be a case of reverse discrimination. And by not fully prosecuting the case, the Justice Department has sent the message that voter intimidation of white voters is acceptable.

In fact, that appears to be the stated policy of the Department's Civil Right Division. On July 6, 2010, J. Christian Adams, a former career Department attorney assigned to the New Black Panther Party trial team, testified before the U.S. Commission on Civil Rights about his knowledge of events surrounding the Department's May 2009 dismissal of most of its lawsuit.

Mr. Adams testified under oath that Deputy Assistant Attorney General Julie Fernandes, one of your political appointees, instructed Voting Section attorneys that "cases are not going to be brought against black defendants [for] the benefit of white victims," and "that if somebody wanted to bring these cases, it was up to the U.S. Attorney, but the Civil Rights Division wasn't going to be bringing [them]."<sup>3</sup>

This statement provides new context to the Department's handling of the New Black Panther Party case and suggests that the Department's May 2009 abandonment of the case was the result of hostility towards race-neutral enforcement of the laws. More specifically, it suggests a preference on the part of your political appointees for not enforcing voting rights laws against African-American defendants. A founding principle of this nation is equality under the law. That means it is unacceptable for the Justice Department to determine whether to enforce a law based upon the race of a defendant or victim. That the Department would not take seriously such allegations against itself is troublesome.

Equally troubling are questions raised by Mr. Adams' testimony on his experience working in the Civil Rights Division as a Voting Section attorney. According to Mr. Adams, Ms. Fernandes spoke at a Justice Department meeting on National Voter Registration Act (NVRA) enforcement decisions. The law was signed by President Clinton in 1993, and its relevant provision on voter list integrity requires states to ensure that no ineligible voters are on its voter rolls, including ineligible persons who are dead, felons, or people who have moved. Specifically, Mr. Adams testified that Ms. Fernandes spoke to a room full of "the entire Voting

---

<sup>3</sup> U.S. Commission on Civil Rights, "The New Black Panther Party Hearing (2)," 62 (July 6, 2010).

The Hon. Barack Obama  
July 22, 2010  
Page Three

Section” and said of the NVRA’s voter list integrity provisions: “We have no interest in enforcing this provision of the law. It has nothing to do with increasing turnout, and we are just not going to do it.”<sup>4</sup>

If someone votes illegally and negates a legal voter’s ballot, that voter has been effectively denied their right to vote. In the landmark case of *Reynolds v. Sims*, the Supreme Court stated “the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.”<sup>5</sup> It is especially concerning to hear that an Obama administration political appointee may have stated to a room full of subordinates that the Department of Justice has no interest in protecting the right of American voters from being diluted by illegal votes and voter fraud.

I am aware that the Department’s Office of Professional Responsibility is reviewing the conduct of the attorneys in the New Black Panther Party case. However, the limited scope of that office’s investigatory authority, and the broad nature of these recent allegations, requires an expansive independent review of the handling of this case.

Martin Luther King’s dream was not that whites would someday get the same wrong treatment and abuse that African-Americans had faced. His dream was that as a nation, all races, religions, and genders would be treated equally, with respect, fairness and justice. You yourself spoke eloquently about our nation’s continuing efforts to reach this ideal during the Democratic Party primary in 2008.<sup>6</sup>

The New Black Panther Party’s conduct on Election Day 2008, and your Administration’s failure thus far to make unequivocally clear that racially motivated voter intimidation is not acceptable in America, tramples upon the efforts of all of those who have worked towards achieving Dr. King’s dream. If indeed the Department has adopted a policy of racially discriminatory non-enforcement of voting rights laws it means that the agency charged with enforcing our civil rights laws—the Justice Department—itself has a policy of racial discrimination.

---

<sup>4</sup> *Id* at 64.

<sup>5</sup> *Reynolds v. Sims*, 377 U.S. 533, 555 (1964).

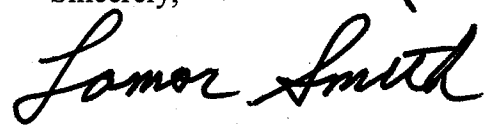
<sup>6</sup> Sen. Barack Obama, “A More Perfect Union,” (delivered March 18, 2010) available at <http://www.npr.org/templates/story/story.php?storyId=88478467&ps=rs> (last visited July 21, 2010).

The Hon. Barack Obama  
July 22, 2010  
Page Four

On Election Day 2008, two bullies stood outside a polling station and intimidated voters of all races—causing some voters to turn away out of fear. Rather than being punished for voter intimidation crimes, the Justice Department gave them a free pass.

We are months away from the mid-term elections. Steps must be taken to assure the American public that the Department will pursue all legitimate voter intimidation cases. Thank you for your consideration of this request and I look forward to your reply.

Sincerely,

A handwritten signature in black ink that reads "Lamar Smith". The signature is written in a cursive, flowing style.

Lamar Smith  
Ranking Member

Cc: The Honorable Eric H. Holder, Jr.  
The Honorable John Conyers, Jr.